

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of the Commission's Rules
with Regard to the 3650-3700 MHz
Government Transfer Band

ET Docket No. 98-237
RM-9411

**PETITION FOR CLARIFICATION AND, IF NECESSARY, RECONSIDERATION
OF THE FIRST REPORT AND ORDER AND COMMENTS TO
THE SECOND NOTICE OF PROPOSED RULE MAKING**

EchoStar Satellite Corporation ("EchoStar") hereby files this Petition in accordance with Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, and Comments in response to the First Report and Order and Second Notice of Proposed Rulemaking released in the above-captioned matter.¹ EchoStar provides Direct Broadcast Satellite ("DBS") services to over 5 million subscribers throughout the United States by means of a constellation of 6 satellites (soon to be augmented).² In addition, EchoStar Satellite Corporation holds licenses to operate Fixed-Satellite Service ("FSS") systems in the Ku- and Ka-bands. EchoStar supports strongly

¹ See In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, First Report and Order and Second Notice of Proposed Rulemaking, FCC 00-363 (rel. Oct. 24, 2000) ("Report and Order and Second NPRM"); see also 65 Fed. Reg. 69451 (2000).

² See Comments of EchoStar (filed Feb. 16, 1999), In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, Notice of Proposed Rulemaking, FCC 98-337 (rel. Dec. 18, 1998) ("EchoStar Comments") (discussing EchoStar's system and subscriber base, both of which have expanded significantly).

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the grandfathering of existing satellite operations in the extended C-band, since the only way to control one of its satellites (EchoStar 2) is through use of that spectrum. EchoStar requests a clarification of the grandfathering provision to ensure that it also covers communications with that satellite from new uplink sites such as EchoStar's new Gilbert, Arizona site as well as communications in the event of relocation of that satellite to another orbital slot. To the extent that this was not the intent of the grandfathering provision, EchoStar requests reconsideration of that provision. Finally, with respect to the Second NPRM, EchoStar supports the proposed Space Operations allocation and believes that the band should be available for Telemetry Tracking and Control ("TT&C") operations for all satellite systems indiscriminately.

I. THE COMMISSION SHOULD PROTECT FUTURE TT&C OPERATIONS FOR SATELLITES ALREADY AUTHORIZED TO EXECUTE TT&C FUNCTIONS IN THE EXTENDED C-BAND

EchoStar supports the Commission's decision to protect EchoStar's earth stations used for TT&C operations in this band. Specifically, the Commission states:

*Consistent with our regulatory treatment of existing FSS earth stations, we will grandfather the sites currently used to provide TT&C operations, including Echostar's. As a result those sites will receive the same protections as the other grandfathered FSS earth stations in the 3650-3700 MHz band, except that they will be protected only for the frequencies they are authorized to use for TT&C operations. Any other TT&C operations site that receives grandfathering protection in the 3650-3700 MHz band will also be protected only for the specific frequencies the site is authorized to operate on pursuant to the license it holds.*³

³ Report and Order and Second NPRM at ¶ 31 (citation omitted and emphasis added).

This statement was a response to comments filed by EchoStar in these proceedings. In those comments, EchoStar stated that in order to protect the safety of EchoStar 2:⁴

it is essential for the Commission to rule that any future non-government fixed service providers will not be entitled to protection from, and will not cause interference to, Directsat's TT&C operations in the few current, or likely future, locations of earth stations conducting TT&C communications with that satellite. ... Therefore, the Commission should exempt from the freeze on accepting further earth station applications in that band requests for earth station authorizations for TT&C communications with satellites already authorized to conduct their TT&C functions in the band.⁵

It seems clear that the Commission granted EchoStar's request to protect on a primary basis EchoStar's earth stations providing TT&C functions in the extended C-band to EchoStar 2, an existing satellite authorized to operate in the band.⁶ Moreover, read in conjunction with EchoStar's comments, the language from the Report and Order also seems to protect earth stations that will likely provide functions in the extended C-band to EchoStar 2 in the future.⁷

The only way to control EchoStar 2 is through the use of this spectrum,⁸ and EchoStar needs flexibility to conduct TT&C communications with it from new uplink sites. Indeed, only last year EchoStar purchased a new state of the art uplink center located in Gilbert,

⁴ EchoStar 2 is also known as Directsat 1.

⁵ EchoStar Comments at 2. Directsat Corporation is a subsidiary of EchoStar.

⁶ EchoStar Comments at 2, 4-5.

⁷ See EchoStar Comments at 5-6 (urging co-primary protection for future earth-stations providing TT&C functions to existing satellites operating in the extended C-band).

⁸ EchoStar 2 is currently operated as an in-orbit spare.

Arizona from AskyB at a cost of tens of millions of dollars. EchoStar has also been paying millions more for third-party TT&C contracting. In these circumstances, it is essential to the integrity and flexibility needed by EchoStar's program to be able to use new sites for conducting TT&C functions with existing satellites. That need is all the more acute in light of orbital relocations necessary for maintaining or improving DBS service across the United States, which might be optimally effected through use of different sites. In sum, successful operation of this complex and high-priced system of earth- and space-station communications demands reasonable flexible regulations that enable EchoStar and its TT&C contractors to provide EchoStar 2 with extended C-band TT&C functions from various earth stations.

EchoStar, therefore, requests that the Commission clarify its intent to exempt from the "freeze" all future requests for earth station authorizations to conduct TT&C communications with satellites that are already authorized to conduct such important communications in the extended C-band, including EchoStar 2. If, alternatively, this was not the Commission's intent, EchoStar hereby petitions the Commission to reconsider its decision.

The Commission tentatively concluded in the Report and Order and Second NPRM that terrestrial Fixed Services ("TFS") stations located within 200 miles of a grandfathered satellite earth station must coordinate operations with the satellite earth station based on ITU Appendix S7.⁹ Since the Commission permits flexibility for FSS earth-station use,

⁹ See Report and Order and Second NPRM at ¶ 103.

this coordination procedure must account for possible future changes such as polarization and receive antenna orientation changes.¹⁰ EchoStar supports the coordination-zone policy.

Notably, the Commission states, “given that we permit flexibility for FSS earth station use, the coordination procedures should take into account any possible future changes to the FSS earth station facilities, including possible future polarization and receive antenna orientation changes.”¹¹ The Commission asks whether to adopt a coordination method that protects the earth station’s orientation, “plus a fixed arc adjacent to that orientation.”¹² EchoStar supports that notion since it is essential for the grandfathering provision to encompass adequate flexibility to allow relocation of an existing satellite such as EchoStar 2 and TT&C communications with that satellite at its new orbital location.

II. ECHOSTAR SUPPORTS THE PROPOSED MODIFICATIONS TO PART 25 AND SECTION 2.106

EchoStar supports the proposal to modify Part 25 of the Commission’s rules to permit TT&C operations in the extended C-band for FSS systems that operate outside of the C-band frequencies.¹³ Geographic, bandwidth, and propagation restraints can severely hinder the effectiveness of satellite operations. The proposed change would provide much needed

¹⁰ Id.

¹¹ Report and Order and Second NPRM at ¶ 103.

¹² Id.

¹³ See Report and Order and Second NPRM at ¶ 129-130.

flexibility for TT&C operations. For the same reasons, EchoStar also urges the Commission to adopt its proposal to modify the Table of Allocations in Section 2.106 of the Commission's rules to include an allocation for space operations in the 3650-3700 MHz band, and the companion 6425-6525 MHz bands, to be used for TT&C by non-FSS satellite systems.¹⁴

III. CONCLUSION


EchoStar respectfully asks the Commission to clarify the grandfathering provision in accordance with the foregoing. To the extent the intent of the grandfathering provision diverges from the requested clarification, EchoStar requests reconsideration of that question. EchoStar also urges the Commission to adopt its proposed changes to Part 25 and Section 2.106 of the Commission's rules in order to increase the necessary flexibility for TT&C operations in the extended C-band.

¹⁴ Id. at ¶ 132. EchoStar also supports the Commission's proposal to delete or modify the outdated footnote US 245 in order to facilitate access by satellite systems to the FSS space-to-earth allocation of the 3600-3700 MHz band. Id. at ¶ 128

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